GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

Advisory Opinion

No. 2020-04

In response to an advisory opinion request submitted on December 7, 2020, by Ms. Joyce Gist Lewis, the Georgia Government Transparency and Campaign Finance Commission advises that a candidate for public office, including incumbent public officers seeking election to a new office, may not accept campaign contributions, nor make campaign expenditures, for their campaign for new office prior to the filing of a Declaration of Intention to Accept Campaign Contributions ("DOI") pursuant to O.C.G.A. § 21-5-30(g).[1] Likewise, a candidate for public office, including incumbent public officers seeking election to a new office, may not solicit or accept in-kind campaign contributions and/or in-kind campaign expenditures, irrespective of the purpose of said in-kind transactions, prior to the filing of a DOI pursuant to O.C.G.A. § 21-5-30(g). Finally, a candidate for public office, including a public officer seeking reelection or election to a new office, may not utilize campaign contributions or campaign funds for extraordinary and unnecessary expenses which exceed the scope of permissible campaign expenses as contemplated by O.C.G.A. § 21-5-3(18).[2]

Questions Presented in Request for Advisory Opinion 2020-04

1) May a person considering whether to become a candidate pay for, accept payment for, or accept the conveyance or transfer of services relating to his or her consideration of whether to seek nomination for or election to public office?
2) May a candidate, or a person considering whether to become a candidate, solicit or accept legal counsel as to compliance with state and federal law, including without limitation the Act and the Rules, prior to the filing of a DOI?
3) May a candidate lawfully accept or solicit services from vendors prior to the candidate's filing of a DOI when such services are not invoiced or billed to the candidate or to the campaign committee until a later date in the ordinary course of the vendor's business?

[1] The Commission specifically notes that a public officer seeking reelection to their same office is permitted to accept campaign contributions and make campaign expenditures without having to refile a DOI for the same office provided that said public officer has previously complied with the provisions of O.C.G.A. § 21-5-30(g).

[2] The Commission also notes candidates for public office, including public officers seeking reelection or election to a new office, should exercise caution when utilizing campaign funds for expenses that can have a dual purpose and benefit as such expenses are often impermissible conversions of campaign assets if not properly monitored and controlled by the candidate or public officer.

4) If the answer to (3) is a qualified or unqualified "yes," how should services like those described in (3) be dated and described on required campaign contribution disclosure reports filed by the candidate or campaign committee, e.g. should the vendor be required to segregate services provided prior to the filing of a DOI from those provided after the filing of a DOI, even if occurring within the same calendar month?
5) May a candidate or campaign committee incur expenditures for organization memberships, including conference centers, dining clubs, and similar entities, that provide secure meeting space as a benefit of membership as an ordinary and necessary expense of a campaign?
6) May a candidate or campaign committee incur expenditures for organization memberships, including without limitation "sky clubs," "admiral clubs," and airport station lounges that provide secure meeting space while traveling as a benefit of membership, as an ordinary and necessary expense of a campaign?

Factual Background

In a letter dated December 7, 2020, Ms. Joyce Gist Lewis (hereinafter "Ms. Lewis") seeks guidance as to whether a candidate for public office (hereinafter "candidate") may, in compliance with the Georgia Government Transparency & Campaign Finance Act (Act), accept campaign contributions in a variety of ways prior to the filing of DOI pursuant to O.C.G.A. § 21-5-30(g). In pertinent part, Ms. Lewis inquires as to whether a candidate is permitted to engage in any of the following activities prior to the filing of their DOI - 1) pay for services relating to his or her consideration to seek nomination for or election to public office; 2) accept payment for services relating to his or her consideration to seek nomination for election to public office; or 3) accept the conveyance or transfer of services relating to his or her consideration of whether to seek nomination for or election to public office. Additionally, in her request, Ms. Lewis also inquires as to whether a candidate is permitted to solicit and/or accept in-kind contributions for services, including legal and compliance services, prior to the filing of a candidate's DOI. Finally, Ms. Lewis inquires as to whether a candidate may incur expenditures for various types of membership organizations (e.g. diner clubs, conference centers, and sky lounges) which have a high likelihood of resulting in dual use conflicts and can easily result in the impermissible conversion of campaign funds into personal assets of the candidate in violation of the Act pursuant to O.C.G.A. § 21-5-33(c).

In support of her request, Ms. Lewis posits that the Act and the Commission's administrative rules and regulations, Ga. Comp. R. & Regs. r. 189-1-.01 *et seq*. (hereinafter "Rules"), do not expressly prohibit a candidate or their campaign committee from making expenditures towards a candidate's campaign prior to the filing of the candidate's DOI. Furthermore, Ms. Lewis asserts that "[t]he Act and the Rules are silent as to whether a person considering a campaign for public office may incur, accept, or solicit services by vendors relating to such consideration before filing a DOI for that public office." Advisory Opinion Request 2020-

04; page 2, ¶ 2. In furtherance of her request, Ms. Lewis advances the proposition that campaigns, as a matter of practice, do regularly accept services (e.g. web development, field consulting, media production, etc.) prior to the filing of a DOI as "[c]ampaigns do not spring, and never have sprung, fully-formed from the earth upon the filing of a DOI." *Id*. at page 3, ¶ 4.

Discussion & Legal Analysis

When the General Assembly adopted the Ethics in Government Act (the precursor to the current Georgia Government Transparency and Campaign Finance Act) (hereinafter "Act"), the Georgia General Assembly sought to restrict not only the amount of campaign contributions and period of time that a public officer/candidate could solicit and accept said contributions, but also the ability of said persons to expend those funds during their campaigns for elected public office. *See*, O.C.G.A. § 21-5-33(a), (c) (limiting the use of campaign funds for ordinary and necessary campaign expenses and holding that campaign funds shall not constitute the personal assets of a candidate). *See e.g.*, O.C.G.A. §§ 21-5-30(g) (prohibiting the acceptance of campaign contributions prior to the filing of a DOI); 21-5-41 (setting maximum campaign contribution limits for each election cycle); and 21-5-43 (establishing accounting standards to limit the time frame that contributions may be accepted).

From the very inception of the Act, candidates, public officers, and even former members of this Commission, have contested almost every provision of the Act in attempts to circumvent the campaign finance restrictions that were imposed upon candidates and public officers by the General Assembly. One of the most contentious, and often repeated, challenges to the Act has centered upon regulations which control the acceptance and expenditure of campaign contributions by candidates and public officers. In one of the earliest challenges to the Act, the Commission, as then constituted, sought to invalidate the Act's requirement to report and regulate a candidate's self-funded campaign contributions through the adoption of an administrative rule which would have excluded self-funded contributions from mandated public disclosure to members of the general public. *Kaler v. Common Cause of Georgia*, 244 Ga. 838 (1979). In *Kaler*, the Georgia Supreme Court enjoined the Commission from adopting such a regulatory rule because such a rule would be in direct opposition to the Act's explicit definition of "contribution" which was to include "anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for the offices provided for in the [Act]." *Id*. at 838. As the Court held, when applying the Act's definition of contribution in conjunction with the definition of "person," the Act required the disclosure – and regulation – of all contributions of $101.00 or more from any person, including the candidate himself. *Id*. at 839. Moreover, the Court also held in a prior case that "[I]n the context of a candidate, […] 'contribution' includes, not only the transfer of personal funds to the candidate's campaign, but also the candidate's expenditure of said funds toward the same end." *Id*. at 840. *See also*, *Forston w. Weeks*, 232 Ga. 472, 480 (1974) (holding that in the context of a non-candidate, the Act's definition of "contribution" included, not only the transfer of personal and non-personal funds to the candidate or his campaign

committee for expenditure by them on behalf of the candidate's campaign, but also the non-candidate's expenditure of said funds towards the same end).

While one could readily agree with Justice Jesse G. Bowles, who wrote for the dissent in *Kaler*, that the "[Act] now being considered is not a model of precision in drafting," the current iteration of the Act, as it relates to contributions and expenditures, leaves little in the way of inconsistency or flexibility that would permit a candidate or public officer from classifying funds in a manner so as to avoid regulation by the Act. *Id*. In fact, as presently drafted, the Act now defines a contribution as:

> [A] gift, subscription, membership, **loan, forgiveness of debt, advance or deposit of money or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office**, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state. The term specifically shall not include the value of personal services performed by persons who serve without compensation from any source and on a voluntary basis. **The term "contribution" shall include other forms of payment made to candidates for office or who hold office when such fees and compensation made can be reasonably construed as a campaign contribution designed to encourage or influence a candidate or public officer holding elective office.** The term "contribution" shall also encompass transactions wherein a qualifying fee required of the candidate is furnished or paid by anyone other than the candidate.

O.C.G.A. § 21-5-3(7) (emphasis added). Whereas an expenditure is defined as:

> [A] purchase, payment, distribution, loan, advance, deposit, or **any transfer of money or anything of value made for the purpose of influencing the nomination for election or election of any person**, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state. The term specifically shall not include the value of personal services performed by persons who serve without compensation from any source and on a voluntary basis. The term "expenditure" shall also include the payment of a qualifying fee for and on behalf of a candidate.

O.C.G.A. § 21-5-3(12) (emphasis added). Moreover, the Act, as it is currently constituted, clearly and unambiguously holds that:

> **Neither** a candidate who is not a public officer nor his or her campaign committee **may lawfully accept a campaign contribution until the candidate has filed with the commission a declaration of intention to accept campaign contributions**

> which shall include the name and address of the candidate and the names and addresses of his or her campaign committee officers, if any[.]

O.C.G.A. § 21-5-30(g) (emphasis added).

In considering Ms. Lewis's request, the Commission must first note that while Ms. Lewis has proffered that a candidate is free to make campaign expenditures prior to the filing of a DOI due to the failure of the Act and corresponding Rules to explicitly prohibit the making of campaign expenditures prior to the filing of a DOI, the Commission has previously advised in Advisory Opinion 2020-01 (hereinafter "AO 2020-01") that "[T]he Act[] require[s] that all candidates for public office are required to file a Declaration of Intention to Accept Campaign Contributions (DOI) prior to the acceptance and/or expenditures of campaign funds pursuant to O.C.G.A. § 21-5-30(g)." S.E.C. AO 2020-01 (2020). In AO 2020-01, which provided guidance concerning the acceptance and expenditure of campaign funds by members of the General Assembly during a session of the General Assembly, the Commission specifically noted that the Act prohibits members of the General Assembly and certain public officers subject to O.C.G.A. § 21-5-35 from accepting contributions while the General Assembly is in session, but it does not prohibit the same public officers from spending campaign funds that are presently in their or their campaign committee's possession. Moreover, in AO 2020-01, the Commission noted that the relevant prohibition on accepting contributions specifically states that a member of the General Assembly "**shall [not] seek or accept** a contribution or a pledge of a contribution to the member or the member's campaign committee." O.C.G.A. § 21-5-35 (emphasis added). The Commission further held in AO 2020-01, that a hypothetical member would not be seeking a campaign contribution of any kind as the member would not be donating to his own person that which is already in his possession (e.g. his own personal funds). The Commission also held that the member in the hypothetical would not be transferring any assets (i.e. a "contribution") to his campaign committee while the General Assembly was officially in session as the member would simply be making campaign expenditures from his own personal funds for campaign expenses, transactions which are not restricted by any provisions contained in O.C.G.A. § 21-5-35.[3]

In the instant request, Ms. Lewis has proffered a hypothetical in which a candidate is expending funds, which may or may not belong to the candidate, prior to the filing of the candidate's DOI. In support of her hypothetical, Ms. Lewis has propounded, in addition to the fact that the Act is silent as to the expenditure of campaign contributions prior to DOI, that "Candidates and campaign committees perceive seeking legal counsel, preparing to activate a website and accept contributions, developing logos, and associated expenditures as necessary components of planning and running a modern campaign. Campaigns do not spring, and never have sprung, fully-formed form the earth upon the filing of a DOI." Advisory Opinion Request 2020-04; page 3, ¶ 1. While Ms. Lewis is correct that campaign's do not spring forth fully-formed, neither do they

[3] The Commission did not hold in AO 2020-01 that a candidate or any other person or entity would be entitled to make expenditures towards the election of any candidate prior to the filing of a DOI.

operate for extended periods of time nor do they expend substantial sums of money, either at the state or federal level, prior to declaring their existence to the relevant regulatory authority. While Ms. Lewis is correct, that the Federal Elections Commission (hereinafter "FEC") has promulgated a federal regulation which permits a candidate to "test the waters" through the expenditure of $5,000.00 in campaign funds prior to being required to declare their intention to seek public office and registering their campaign with the FEC, no such "testing the waters" provision exists either under the terms of the Act or the Commission's regulatory Rules. *See generally*, 11 C.F.R. §§ 100.82, 101.3. What is omitted from Ms. Lewis's request is the fact that the Commission has adopted an alternative regulatory structure to equitably address instances where candidates choose to not seek elected public office after the filing of their DOI and registration with the Commission. Whereas the FEC permits limited transactions and reporting prior to registering a campaign for office, under Georgia law, if a candidate for state or local office chooses to not qualify for office (i.e. decides against running for the same reasons that are identified by candidates who "test the waters" at the federal office level), said candidates are permitted to reduce the number of campaign contribution disclosures they are required to file with the Commission from six disclosures in an election year to no more than two disclosures on an alternate – less taxing – filing schedule. *See* Ga. Comp. R. & Regs. r. 189-3-.01(4).[4] While reasonable arguments can be advanced by those who favor one regulatory model over the other, the fact remains, that Georgia law and its regulatory scheme does not permit the expenditure of campaign funds prior to a candidate declaring their intention to accept campaign contributions for public office. Likewise, while the Act and Rules are silent as to the making of an expenditure prior to the filing of a DOI, the Commission finds that if a candidate is not permitted to accept campaign contributions, which includes anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office – including a candidate's own personal funds, then *a fortiori*, a candidate would have nothing that could be lawfully expended as an expenditure for their campaign. Thus, the Commission advises that a person considering whether to become a candidate may not pay for, accept payment for, or accept the conveyance or transfer of services relating to his or her consideration of whether to seek nomination for or election to public office.

In turning to Ms. Lewis's second question, as presented in her request, as to the acceptance of campaign contributions or services, including services that are solicited and/or paid for, prior to

[4] Ga. Comp. R. & Regs. r. 189-3-.01(4) requires the following filing schedule for persons who file a DOI but who subsequently fail to qualify for office - Persons who would have been in a primary election must file: (1) The June 30 Campaign Contribution Disclosure Report, and (2) the January 31 Campaign Contribution Disclosure Report immediately following the election referred to in the declaration of intention to accept campaign contributions. Any person who has excess contributions from the campaign must file a December 31 supplemental campaign contribution disclosure report each year thereafter until all contributions are expended as provided in the Act. Whereas persons who would have been in a general or special election must file: (1) the October 25 and December 31 reports if the person would have been in a general election, and (2) the fifteen days before special election report and December 31 report if the person would have been in a special election. Candidates who file a declaration of intention to accept campaign contributions and an Exemption Affidavit, but who do not qualify to run for office may file a Final Report and Termination Statement within 10 days of the dissolution of their campaign.

the filing of the candidate's DOI, the Commission finds that the Act is clear that, "**[n]either** a candidate who is not a public officer nor his or her campaign committee **may lawfully accept a campaign contrition <u>until the candidate has filed with the commission a declaration of intention to accept campaign contributions</u>** which shall include the name and address of the candidate and the names and address of his or her campaign committee officers…[.]" O.C.G.A. § 21-5-30(g) (emphasis added). Moreover, the Commission notes that it has promulgated an administrative rule which further clarified the Act's prohibition against the raising, acceptance, or provisioning of contributions and loans, whether from third parties or from self-funding, until such time as a DOI is properly filed with the Commission. Ga. Comp. R. & Regs. r. 189-6-.10 (No person or a campaign committee may accept campaign contributions, including personal loans, prior to the filing of a Declaration of Intention to Accept Campaign Contributions).[5] Further, the Commission finds that there are no facts presented by the hypothetical which would demonstrate that the solicitation of legal advice for compliance with federal law would have any bearing or impact upon a candidate, or their campaign committee, considering a campaign for state or local office. The Commission simply advises that the Act does not prohibit the use of campaign contributions for expenditures related to the seeking of federal office; however, other federal regulations may apply and any candidate seeking to use state campaign funds for a campaign for federal office would be well advised to contact the Federal Elections Commission for guidance regarding that issue. With respect to the use of campaign funds to seek legal compliance advice for a campaign seeking state or local office, the Commission notes that such an issue will turn upon the specific facts of each case and therefore cannot provide blanket guidance for all possible methods of solicitation and acceptance of legal advice. The inability to provide blanket advice notwithstanding, the Commission notes that the mere solicitation of legal services does not normally result in the provision of legal advice. Until such time as an attorney-client relationship is formed, there would be no service rendered which would constitute "anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office" and thus would not constitute a campaign contribution. However, should a candidate accept substantive legal advice or legal services (e.g. the incorporation of a campaign committee, a supporting 501(c)(4) social welfare organization, or a supporting 527 organization), such services and advice would meet the Act's definition of a "contribution" and their acceptance would be prohibited until the candidate filed their DOI with the Commission. The Commission further notes that while the filing of a DOI in prior years did entail delays due to the physical filing requirements of said declaration, the Commission's newest filing and registration system permits the almost instantaneous filing of a DOI with the Commission, a filing that can occur right after the formation of an attorney-client relationship, but before the acceptance of any substantive legal

[5] Ga. Comp. R. & Regs. r. 189-6-.10(2) also holds that "Neither a candidate who is already a public officer nor his or her campaign committee may lawfully accept a campaign contribution for a campaign for a different office unless and until that candidate has filed a Declaration of Intention to Accept Campaign Contributions for that different office."

work which would constitute a contribution subject to regulation by the Commission and Georgia law.

With respect to Ms. Lewis's third question, regarding the solicitation and acceptance of services from vendors, excluding legal and compliance vendors, prior to the filing of a candidate's DOI, the Commission finds no basis to vary its guidance for vendors of any category and adopts and reiterates its guidance as previously stated with respect to the second question presented by Ms. Lewis. The Commission is mindful of Ms. Lewis's assertion that it is common practice for campaigns to accept services prior to the filing of a DOI; however, the Commission has successfully prosecuted individuals for violation of the Act for accepting contributions or making expenditures before the filing of a DOI.[6]

With respect to Ms. Lewis's fourth question, Ms. Lewis seeks guidance on whether a candidate would have to comply with certain disclosure requirements if the solicitation and acceptance of services of a candidate prior to the filing of a DOI were permitted by the Commission; as the Commission has advised in the negative with respect to questions two and three, the Commission finds question four to be moot.

As to questions five and six, Ms. Lewis seeks guidance as to whether a candidate, and by implication a public officer, may permissibly expend campaign contributions for membership dues for organizations and entities which provide members services which can be used for both campaign and personal purposes (e.g. country clubs, dining clubs, travel clubs, etc.). In considering Ms. Lewis's hypotheticals as propounded in questions five and six, the Commission notes that the Act holds that a candidate may permissibly use campaign "[c]ontributions […] and any proceeds from investing such contributions […] to **defray ordinary and necessary expenses** […] incurred in connection with such candidate's campaign for elective office or such public officer's fulfillment or retention of such office." O.C.G.A. § 21-5-33(a) (emphasis added). To further assist public officers/candidates with delineating what is and is not an "ordinary and necessary expense" the General Assembly defined said "ordinary and necessary expenses" as including, but not limited to:

> […] expenditures made during the reporting period for qualifying fees, office costs and **rent**, **lodging**, equipment, travel, advertising, postage, staff salaries, consultants, files storage, polling, **special events**, volunteers, reimbursements to volunteers, repayment of any loans received except as restricted under section (i) of Code Section 21-5-41 [maximum contribution limits], contributions to nonprofit organizations, flowers for special occasions, which shall include, but are not limited to, birthdays and funerals, attorney fees connected to and in the furtherance of the campaign, and all other expenditures contemplated in Code Section 21-5-33.

[6] One of the Commission's first successful prosecutions for acceptance of contributions prior to DOI was in Case No.: 2012-0055; In the Matter of Melynee Leftridge, where Ms. Leftridge impermissibly accepted $4,844 in self-funded campaign contributions prior to the filing of her DOI.

O.C.G.A. 21-5-3(18) (emphasis added).

Since 2007, the Commission has received several requests to further delineate what constitutes an ordinary and necessary expense when campaign expenses fall outside of the Act's delineated definition of what constitutes ordinary and necessary expenses. One of the first requests to the Commission for an advisory opinion seeking such a delineation was issued on July 26, 2007 and related to the use of campaign funds to pay for a public officer's retirement party. In its inaugural opinion on this issue, the Commission held that:

> Although one definition of 'fulfill' is "to bring to an end," we believe that fulfillment of office relates to the obligations of the public officer in the context of their public responsibilities, and a retirement party **does not fulfill judicial obligations or responsibilities**. Therefore, campaign contributions **should not** be used for the purpose of hosting the retirement party of a judge.

S.E.C. AO 2007-03 (2007) (emphasis added). In a subsequent opinion request, the Commission was presented with a hypothetical regarding the use of campaign funds by an elected public officer for the creation and funding of a legal defense fund to assist in the paying of legal fees arising from challenges to the election of a political party's officers. In that opinion, the Commission held that the use of campaign funds, as posited in the request's hypothetical, "[Did] not appear to be related to a [public officer's] campaign for office or to the fulfillment or retention of office sufficient to qualify [the expenditure] as a permitted expenditure under O.C.G.A. § 21-5-33(a)." S.E.C. AO 2007-08 (2007). But c*f.* S.E.C. AO 2007-07 (2007) (held, *inter alia*, that the use of campaign funds for expenses related to the use of private aircraft, if related to a public officer's fulfillment or retention of office, were ordinary and necessary expenses authorized by the Act). More recently the Commission was presented with two requests which posited similar hypotheticals regarding the use of campaign funds for the use of private aircraft, for campaign purposes, where the public officer/candidate or the public officer's/candidate's spouse owned an interest in said aircraft. In its consolidated advisory opinion, the Commission held that:

> (1) In the case of travel on an aircraft that is **owned or leased under a shared-ownership or other time-share arrangement**, where the travel does not exceed the candidate's or immediate family member's proportional share of the ownership interest in the aircraft, the candidate must pay and report the hourly, mileage, or other applicable rate charged the candidate or immediate family member for the costs of the travel; or
> (2) In the case of travel on aircraft that is **owned or leased under a shared-ownership or other time-share arrangement**, where the travel exceeds the candidate's or immediate family member's proportional share of the ownership interest in the aircraft, the candidate must pay and report the normal and usual charter fare or rental charge for travel on a comparable aircraft of comparable size.

S.E.C. AO 2012-04 / 2012-06 (2012) (emphasis added). The Commission also notes that in guidance previously provided in S.E.C. AO 2012-04 / 2012-06 *supra*, the Commission authorized

the expenditure of campaign funds for rental fees and other "applicable charges" that were outside of the "proportional share of ownership interest" that belonged to the public officer/candidate or the public officer's/candidate's family member. Thus, any funds utilized in conformity with the aforementioned guidance would have no material effect upon the public officer's/candidate's or the public officer's/candidate's family member's financial interest in the owned aircraft as the fees paid would not alter, either in an increase or decrease, the fractional ownership interest or overall net value of the financial interest owned by the same in the aircraft. The Commission also takes notice of its more recent advisory opinions regarding the use of campaign funds for ordinary and necessary expenses wherein the Commission expressly forbid the use of campaign funds for the purchase of home security systems by public officers as such an expense "[…] would constitute permanent capital improvements [of] an elected official's personal residence." C.F.C. AO 2014-03 (2015) (Further holding that the cost of installing a security system in a public officer's personal residence would not be incurred in connection with such officer's campaign for elected office or fulfillment or retention of such office). Likewise, the Commission also reaffirmed prior guidance in AO 2020-03 (2020) wherein a candidate may lawfully use campaign funds for rent and lodging as permitted by O.C.G.A. § 21-5-33(a) as such expenses are explicitly deemed "ordinary and necessary expenses" by the Act pursuant to O.C.G.A. § 21-5-3(18) in instances where the public officer/candidate is using campaign funds to pay for rent and lodging in real property in which they do not have a financial interest as there is no bar raised by the Act against the use of said funds as it relates to the individual's campaign for elected public office or a public officer's fulfillment or retention of such office. However, the use of campaign funds for rent and lodging expenses would not be deemed ordinary and necessary for real property that is owned by the public officer/candidate or by a spouse of the public officer/candidate or by a company owned in whole or in part by the public officer/candidate or their spouse would have the effect of transferring campaign funds to the public officer/candidate, thereby converting campaign funds into personal assets of the public officer/candidate. *See* C.F.C. AO 2020-03 (2020). Throughout these opinions, the Commission has maintained the principal that if a candidate is making campaign expenditures, said expenditures cannot be used to subsidize their routine living expenses that would occur irrespective of their public duties or result in the conversion of assets for personal use in violation of O.C.G.A. § 21-5-33(c).

In the instant request, the Commission finds that the legality of expending campaign contributions for joining and utilizing membership organizations will turn upon the specific facts of services being rendered by the membership organization. For example, the payment of membership dues which permits a member (i.e. the candidate) to utilize organization services for purely personal services, would not be a permissible use of campaign contributions and would constitute an impermissible expenditure under O.C.G.A. § 21-5-33(a). However, there are instances where a candidate could permissibly expend campaign funds at a non-political membership organization for services rendered to the campaign. For example, a candidate could obtain a "day pass" for entry into a travel club while traveling for campaign business. Likewise, a candidate would be permitted to expend campaign contributions for the hosting of campaign

luncheons, fundraisers, etc. at country club or dinning club. Given the relevant facts presented in the request *sub judice*, the Commission must advise that a candidate is not permitted to expend campaign contributions or to make reimbursable campaign expenditures to pay membership dues for a membership organization when such an organization readily provides services which may be, and often are, utilized by the candidate in a personal non-campaign related capacity.[7]

Conclusion

The Georgia Government Transparency and Campaign Finance Commission advises that a candidate for public office, including incumbent public officers seeking election to a new office, may not accept campaign contributions, nor make campaign expenditures, for their campaign for new office prior to the filing of a Declaration of Intention to Accept Campaign Contributions ("DOI") pursuant to O.C.G.A. § 21-5-30(g). Likewise, a candidate for public office, including incumbent public officers seeking election to a new office, may not solicit or accept in-kind campaign contributions and/or in-kind campaign expenditures, irrespective of the purpose of said in-kind transactions, prior to the filing of a DOI pursuant to O.C.G.A. § 21-5-30(g). Finally, a candidate for public office, including a public officer seeking reelection or election to a new office, may not utilize campaign contributions or campaign funds for extraordinary and unnecessary expenses which exceed the scope of permissible campaign expenses as contemplated by O.C.G.A. § 21-5-3(18). This Advisory Opinion concerns the application of the Georgia Government Transparency and Campaign Finance Act, or regulations prescribed by the Georgia Government Transparency and Campaign Finance Commission, to the specific facts, transaction or activity set forth in Request for Advisory Opinion 2020-04.

Advisory Opinion 2020-04 is hereby adopted by the Commission in conformity with O.C.G.A. § 21-5-6(13) on April 1, 2021.

Jake Evans
Chairman of the Commission

AO 2020-04 prepared by:

/s/ Robert Stanley Lane
Robert S. Lane
Deputy Executive Secretary

[7] This advisory opinion in no way affects or rescinds the Commission's prior guidance which has found that the use of campaign funds to pay for membership dues to political parties, political organizations, party caucuses, etc. to be "ordinary and necessary" expenses permitted by the Act.